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14 UNITED STATES OF AMERICA and)
the STATE OF CALIFORNIA ex rel)
15 MIKE STIERLI,)
16 Relator Plaintiff,)
17 v.)
18 SHASTA SERVICES, INC., dba)
TIMBERWORKS; and DOES 1 through)
19 50, inclusive,)
20 *Qui Tam* Defendants.)

CIV. S-04-1955 MCE PAN-JFM

UNITED STATES'S REPLY TO
RELATOR'S OPPOSITION TO
UNITED STATES' MOTION TO
DISMISS AND JOINDER IN
MOTIONS TO DISMISS FILED BY
THE STATE OF CALIFORNIA

DATE: June 19, 2006
TIME: 9:00 a.m.
Courtroom: 3

23 I. INTRODUCTION

24 The United States of America, the real party in interest, files this reply to the
25 Relator's Opposition to USA's Motion to Dismiss and Joinder in Motions to Dismiss Filed
26 by the State of California and *Qui Tam* Defendant (filed on May 18, 2006 as document 65
27 on the Court's docket sheet).
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II. ARGUMENT

The United States' reply to relator's overblown rhetoric will be short and to the point: the United States rejects relator's desperate attempt to bring this meritless suit in its name. As previously stated in its Motion to Dismiss, the United States does not equate procedural mistakes defendant may have made in the bid process with a false or fraudulent claim actionable under the federal False Claims Act, 31 U.S.C. § 3729 *et seq.* Nor does the report prepared by Lance Yokota, the Civil Rights Program Manager for the Federal Highway Administration, support relator's claims. To the contrary, Yokota's report only addressed shortcomings in the bid-analysis procedures used by Caltrans. Yokota did not investigate whether defendant Timberworks violated the federal False Claims Act in connection with its bid. Declaration of Lance Yokota in Support of United States of America's Reply to Relator's Opposition to United States' Motion to Dismiss and Joinder in Motions to Dismiss Filed by the State of California, filed herewith.

In addition, the United States requests that this Court consider the unusual circumstances of this case. Both the federal and state governments, the real parties in interest, have moved for dismissal of this action. Certainly, if either governmental entity had concluded that defendant's conduct in the bid process was fraudulent, one or both would be vigorously pursuing all remedies available to it under the law.¹ That neither entity wants this action to continue speaks volumes about the merits of the case.

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¹ Under the federal False Claims Act, for example, the United States is entitled to treble damages and a civil penalty of \$5500-\$11,000 per false claim. 31 U.S.C. § 3729(a).

1 III. CONCLUSION

2 For the reasons set forth above, in its previously filed motion to dismiss and in the
3 the motions filed by the State of California, the United States requests that this action be
4 dismissed in its entirety.

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6 DATED: May 23, 2006

McGREGOR W. SCOTT
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